



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 515

IN THE MATTER OF JAMES B. TRIPPLETT

Appearances: Stephen P. Fauteux, Esq.
Karen Gray, Esq.
Counsel for Petitioner

Michael P. Angelini, Esq.
Counsel for Respondent

Commissioners: Brown, Ch., Burnes, Larkin, McDonough and Rapacki

Presiding Officer: Commissioner Nonnie S. Burnes, Esq.

AMENDED DECISION AND ORDER^{1/}

I. Procedural History

On January 19, 1995, the Petitioner initiated these proceedings by issuing an Order to Show Cause ("OTSC") pursuant to the Commission's Rules of Practice and Procedure. 930 CMR 1.01(5)(a). The OTSC alleged that Town of Oxford Police Chief James Triplett ("Triplett"), violated G.L. c. 268A, §23 in relation to several different matters. In particular, the Petitioner alleged that Triplett violated §'23(b)(2) and (b)(3) by directing that Laurie Carlsen, the daughter of a former Oxford police officer, be released from police arrest without a bail hearing being held, and by delaying the initiation of a criminal complaint against her.^{2/}

Triplett filed an Answer on March 24, 1995 in which he denied the charges relating to the Carlsen incident. He asserted various affirmative defenses, including that the period of limitations for such acts has expired. Numerous pre-hearing conferences were held during 1995 and 1996. At those conferences, procedural issues were discussed primarily focusing on discovery and scheduling.^{3/} The Adjudicatory Hearing, with Commissioner Burnes presiding,^{4/} was held on five separate dates: February 7, February 8, March 4, March 5 and April 4, 1996.^{5/}

II. Findings of Fact

1. Throughout 1991 and 1992, Triplett served as the police chief for the Town of Oxford.
2. At 7:49 p.m. on Sunday, September 8, 1991, Oxford Police Officer Carol LaFleche^{6/} was dispatched to the scene of a two-car automobile accident on Clover Street in the Town of Oxford. Officer LaFleche determined that one of the operators, later identified as Laurie Carlsen, was intoxicated.
3. Officer LaFleche identified herself as a police officer and asked Ms. Carlsen for her driver's license and registration. Ms. Carlsen refused to comply with Officer LaFleche's request and responded to Officer LaFleche with profane language.
4. Officer LaFleche attempted to place Ms. Carlsen under arrest. Ms. Carlsen resisted and, in doing so, she

physically assaulted Officer LaFleche by kicking at her, trying to bite her and by pulling a clump of hair from the officer's head.

5. Oxford Police Officer George Vranos was dispatched to the accident scene where he subsequently placed Ms. Carlsen into his police vehicle in order to transport her to the police station.

6. Ms. Carlsen was placed under arrest at the accident scene for failing to submit to a police officer, assault and battery on a police officer, operating under the influence of alcohol and disorderly conduct.

7. Ms. Carlsen was transported to the Oxford Police Station by Officer Vranos.

8. After being brought into the station, Ms. Carlsen became combative as Officer Vranos attempted to unhandcuff her. Ms. Carlsen charged at Dispatcher Patrick Purcell who was assisting Officer Vranos.

9. Ms. Carlsen refused to cooperate with Officer Vranos as they attempted to conduct booking procedures. Because of her combative behavior, Ms. Carlsen was not fingerprinted or photographed.

10. With the assistance of Officer McCann, Officer Vranos placed Ms. Carlsen in the police station's "female cell." While attempting to remove the handcuffs, Ms. Carlsen continued to be combative. She grabbed the antenna of a police radio and stretched it from its original position. As a result, Ms. Carlsen was also charged with the malicious destruction of property.

11. At 9:11 p.m., Officer LaFleche, accompanied by Officer Vranos, entered the cell in which Ms. Carlsen was held and reread her rights. Ms. Carlsen did not respond.

12. Ms. Carlsen is the daughter of the late Robert Carlsen, a former Oxford police officer. For a period of twelve years, Robert Carlsen and Triplett both served in the Oxford Police Department.

13. At the suggestion of Sgt. Abrahamson, Robert Carlsen was telephoned and subsequently arrived at the station. Robert Carlsen asked of Officer LaFleche what had happened. Officer LaFleche informed Robert Carlsen of the charges pending against his daughter. He asked Officer LaFleche if there was anything she could do for him. Robert Carlsen then asked Officer LaFleche to call Chief Triplett. She did not respond. Dispatcher Purcell subsequently telephoned Triplett at his home.

14. Robert Carlsen spoke with Triplett over the telephone.

15. Officer LaFleche subsequently spoke with Triplett using a telephone in the sergeant's office. Among other things, Triplett discussed with Officer LaFleche releasing Ms. Carlsen to her father. There was no discussion, however, concerning whether Ms. Carlsen had been bailed.^{7/} Triplett told Officer LaFleche that if Ms. Carlsen gave her a hard time upon her release, she was authorized to place Ms. Carlsen back in the cell.

16. At 12:10 a.m. on September 9, 1991, Ms. Carlsen was released from the cell to her father. Upon leaving the station Ms. Carlsen called Officer LaFleche names and made profane gestures.

17. During the evening of September 8, 1991, a bail commissioner was never contacted by Police Department with regard to Ms. Carlsen's arrest. Ms. Carlsen was, therefore, released by the Oxford Police Department without a bail commissioner being contacted or bail being set.

18. Subsequent to Ms. Carlsen's release, Officer LaFleche left the original paperwork concerning Ms. Carlsen's arrest on Triplett's desk.

19. Triplett delivered the application for criminal complaint concerning Ms. Carlsen to Dudley District Court on Friday, September 13, 1991.^{8/}

20. A magistrate's hearing concerning the charges against Ms. Carlsen was conducted at the Dudley District Court on October 16, 1991.

21. Ms. Carlsen's case was finally disposed of on March 19, 1992 when the three traffic violations with which she had been charged (including Operating Under the Influence of alcohol) were continued for one year without a finding and the assault and battery on a police officer charge was dismissed. According to the Application for Complaint, on October 16, 1991, the malicious destruction of property and disorderly conduct charges were dismissed. (Exhibit 61).

22. Triplett and Robert Carlsen had not previously been and were not at times relevant to the arrest of Ms. Carlsen friendly with each other.^{9/}

23. Triplett did not make a written disclosure to his appointing authority regarding his involvement in events following the arrest of Ms. Carlsen.^{10/}

III. Allegations

The Petitioner alleges that "[b]y directing Laurie Carlsen's release from police arrest without a bail hearing first being held, and by delaying the initiation of a criminal complaint against Laurie Carlsen so that her father would have an opportunity to persuade the arresting officer to drop the charges, Triplett knowingly, or with reason to know, used or attempted to use his office as chief of police to secure for Laurie Carlsen an unwarranted privilege or exemption of substantial value which was not properly available to similarly situated individuals." In support of its allegation that Triplett thereby violated §23(b)(2) the Petitioner further alleges that "[f]ollowing Laurie Carlsen's arrest and release, Robert Carlsen requested that Triplett refrain from seeking a criminal complaint against his daughter until he had the opportunity to persuade Lafleche not to pursue charges." The Petitioner also alleges that "Triplett agreed, and held up the Laurie Carlsen criminal complaint application for two weeks. During this period, Robert Carlsen unsuccessfully tried to convince Lafleche to drop the criminal charges."

With regard to §23(b)(3), the Petitioner alleges that "[b]y directing Laurie Carlsen's release from police arrest without a bail hearing first being held, and by delaying the initiation of a criminal complaint against Laurie Carlsen so that her father would have an opportunity to persuade the arresting officer to drop the charges, Triplett knowingly, or with reason to know, acted in a manner which would cause a reasonable person to conclude that he can be improperly influenced and that Robert and Laurie Carlsen can unduly enjoy his official favor as police chief." In support of its allegation, the Petitioner alleges that "Robert Carlsen and Triplett were friendly, and served together on the Oxford Police Department for 12 years." According to the Petitioner, "Triplett made no written disclosure to the Board of Selectmen detailing his delay of the Laurie Carlsen complaint application, or his release of Laurie Carlsen from police arrest."

IV. Decision

As a preliminary matter, we must decide whether, at the relevant time, Triplett was a municipal employee^{11/} subject to G.L. c. 268A. In his Answer, the Respondent admitted that he is the chief of police, but he denied, without explanation, that he is a municipal employee. We conclude that at the time relevant to the allegations in question here, the Respondent was a municipal employee who was subject to the conflict of interest law.^{12/}

A. Section 23(b)(2)

Section 23(b)(2), in relevant part, provides that "No current officer or employee of a . . . municipal agency shall knowingly or with reason to know: . . . (2) use or attempt to use his official position to secure for himself or others unwarranted privileges which are of substantial value and which are not properly available to similarly situated individuals."

We find that the Petitioner has failed to prove by a preponderance of the evidence that Triplett violated §23(b)(2). The record is devoid of direct evidence that Triplett knew or had reason to know that Ms. Carlsen had not been bailed prior to her release during the early morning of September 9, 1991. Furthermore, we cannot reasonably infer such a finding based on the circumstantial evidence in the record. As to the allegation that Triplett used his position to delay the initiation of a criminal complaint against Laurie Carlsen so that her father would have an opportunity to persuade the arresting officer to drop the charges, the Petitioner has relied heavily on the deposition of Robert Carlsen. After reviewing the deposition transcript, we decline to credit Robert Carlsen's deposition on this point. Moreover, the record does not contain sufficient other evidence of Triplett's

use of his position to secure for Laurie Carlsen an unwarranted privilege or exemption of substantial value. We therefore find that the Petitioner has failed to prove by a preponderance of the evidence^{13/} that a violation of §23(b)(2) occurred.

B. Section 23(b)(3)

Section 23(b)(3) of the conflict of interest law provides that

[n]o current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know . . .

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

We find that the Petitioner has failed to prove by a preponderance of the evidence that Triplett and Robert Carlsen were friendly as alleged.^{13/} Moreover, we find no other basis for concluding that Triplett acted in a manner which would cause a reasonable person to conclude that he could be improperly influenced or that Robert and Laurie Carlsen could unduly enjoy his favor in the performance of his official duties. Accordingly, we find that the Petitioner has not proven by a preponderance of the evidence that Triplett acted in a manner violative of §23(b)(3).

V. Conclusion

After weighing the evidence, we conclude that the Petitioner has not proven, by a preponderance of the evidence, that Triplett violated G.L. c. 268A, §'23(b)(2) and 23(b)(3) by directing that Laurie Carlsen be released from police arrest without a bail hearing first being held, and by delaying the initiation of a criminal complaint against her.

DATE: September 12, 1996

^{1/}This Amended Decision and Order supersedes a previous Decision and Order.

^{2/}The OTSC contained a total of ten counts alleging various violations of §'23(b)(2) and (b)(3). In its Decision and Order dated March 27, 1996, the Commission allowed a joint motion of the parties requesting that it: (1) resolve charges 2, 6 and 8 by authorizing the Commission's Executive Director to execute a Disposition Agreement; (2) dismiss charges 1, 3, 4, 5 and 7; and (3) continue the adjudicatory proceeding as to charges 9 and 10 (concerning the Laurie Carlsen incident). Accordingly charges 1, 3, 4, 5 and 7 were dismissed. The Commission's Executive Director executed a Disposition Agreement in relation to charges 2, 6 and 8 by which the Respondent agreed to pay to the Commission the sum of two thousand dollars (\$2000) as a civil penalty for his course of conduct in violating G.L. c. 268A, §23(b)(3).

^{3/}Commissioner Burnes was the duly designated presiding officer in this proceeding. See G.L. c. 268B, §4(e).

^{4/}Oxford Selectman Herbert Rhinehart submitted a Statement for the Record pursuant to 930 CMR 1.01(8) on April 29, 1995. That statement was subsequently amended on several occasions and became part of the record in this case.

^{5/}LaFleche now uses the name Carol Knapp.

^{6/}There was no direct evidence to contradict Triplett's testimony that no discussion about bail occurred.

^{7/}We credit the testimony of Triplett, Fleming and Black.

^{8/}We credit the testimony of Triplett and Saad.

^{9/}The Petitioner and the Respondent stipulated to this factual finding.

¹⁰Municipal employee is defined, in relevant part, as a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis. . . G.L. c. 268A, §1(g).

¹¹With respect to the Respondent's limitations defense, the Petitioner has met its burden under the Commission's statute of limitation regulation, 930 CMR 1.02(10), in that it has filed a affidavit from the Enforcement Division Investigator responsible for the case indicating no complaint relating to this alleged violation was received more than three years before the OTSC issued. (Exhibit 1). An affidavit from Triplett's public agency employer was also submitted during the hearing indicating that the agency was not aware of any complaint more than three years prior to the issuance of the OTSC. (Exhibit 2). Pursuant to the above-cited regulation, the Respondent may only prevail on a statute of limitations defense if he can show that more than three years before the issuance of the OTSC, the relevant events were a matter of general knowledge in the community or the subject of a complaint filed with the Ethics Commission, the Attorney General, the District Attorney or the respondent's public agency (in the case of a §23 violation). We find that Respondent has failed to meet this burden under the regulation and the statute of limitations defense therefore must fail.

¹²The Petitioner must prove by a preponderance of the evidence that the Respondent violated the conflict of interest law. See 930 CMR 1.01(9)(m)2; *Craven v. State Ethics Commission*, 390 Mass. 191, 200 (1983). The Respondent's assertion that the Petitioner should be held to a standard of "clear and convincing proof" is incorrect.

¹³To the contrary, the record suggests finding that a certain degree of animosity had developed between Triplett and Carlsen.